

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF HAWAII

In the Matter of)

PUBLIC UTILITIES COMMISSION)

Instituting a Proceeding to Investigate)
Implementing a Decoupling Mechanism)
for Hawaiian Electric Company, Inc., and)
Hawaii Electric Light Company, Inc., and)
Maui Electric Company, Limited.)

Docket No. 2008-0274

PUBLIC UTILITIES
COMMISSION

2008 NOV 24 P 1:23

FILED

LIFE OF THE LAND's MOTION FOR LEAVE TO REPLY TO

HAWAIIAN ELECTRIC COMPANY, INC., HAWAII ELECTRIC LIGHT COMPANY, INC., AND
MAUI ELECTRIC COMPANY, LIMITED'S MEMORANDUM IN RESPONSE TO THE MOTION
TO INTERVENE OF LIFE OF THE LAND

AND

LIFE OF THE LAND's REPLY TO

TO HAWAIIAN ELECTRIC COMPANY, INC., HAWAII ELECTRIC LIGHT COMPANY, INC.,
AND MAUI ELECTRIC COMPANY, LIMITED'S MEMORANDUM IN RESPONSE TO THE
MOTION TO INTERVENE OF LIFE OF THE LAND

AND

CERTIFICATE OF SERVICE

HENRY Q CURTIS
VICE PRESIDENT FOR CONSUMER ISSUES

KAT BRADY
VICE PRESIDENT FOR SOCIAL JUSTICE
LIFE OF THE LAND

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Aloha Commissioners,

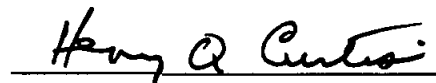
Hawaiian Electric Company, Inc., Hawaii Electric Light Company, Inc., and Maui Electric Company, Limited (Companies) filed the memorandum cited in the title above (Memorandum) opposing full party status for LIFE OF THE LAND (LOL) in this docket. LOL moved for and still seeks full party status in this proceeding. The Companies' arguments in the Memorandum are wrong re points of law. LOL moves for leave to reply to the Memorandum.

LOL's Reply would address the Companies' recommendation that the Commission should apply more stringent standards regarding allowing intervenor "party" status in this docket than the Commission has in past policy-making investigative dockets.

LOL's Reply is attached and is incorporated here in this motion by reference for the purpose and to the extent that the Reply makes clear what is requested in this motion. The Reply is also provided now so as not to delay the proceeding should leave to reply be allowed.

Based on the foregoing, LOL respectfully requests that the Commission grant this motion for leave to reply to the Memorandum or, in the alternative, render this motion moot by continuing to apply permissive standards for intervention in its policy-making investigative dockets and allow full party status to LOL and the other petitioners for intervention in this docket.

Dated: November 25, 2008

A handwritten signature in cursive script, reading "Henry Q. Curtis". The signature is written in dark ink and is positioned above a horizontal line.

HENRY CURTIS

LIFE OF THE LAND

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF HAWAII

In the Matter of)	
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Maui Electric Company, Limited.)	
)	

REPLY TO

**HAWAIIAN ELECTRIC COMPANY, INC., HAWAII ELECTRIC LIGHT COMPANY, INC., AND
MAUI ELECTRIC COMPANY, LIMITED'S MEMORANDUM IN RESPONSE TO THE MOTION
TO INTERVENE OF LIFE OF THE LAND**

HENRY Q CURTIS
VICE PRESIDENT FOR CONSUMER ISSUES

KAT BRADY
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LIFE OF THE LAND

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Aloha Commissioners,

Hawaiian Electric Company, Inc., Hawaii Electric Light Company, Inc., and Maui Electric Company, Limited (Companies) filed the memorandum cited in the title above (Memorandum) opposing party status for LIFE OF THE LAND (LOL) in this docket. LOL moved for and still seeks full party status in this proceeding.

The Commission should reject the Companies' recommendation to change the Commission's standards for allowing intervention as a party in policy-making investigative dockets.

The Companies' recommend that the Commission should apply more stringent standards regarding allowing intervenor "party" status in this docket than the Commission has in past policy-making investigative dockets. For decades the Commission has been permissive in allowing intervention as a party in its policy-making investigative dockets. This practice recognizes the importance of allowing an open spectrum of contributions from interested stakeholders when the Commission is setting its policies. This practice should not be changed.

The Hawaii Supreme Court issued No. 18156 In re Hawaiian Electric stated:

This distinction [between rule-making and adjudication] reflects the consideration that in rule-making policy is dominant, rather than accusatory or disciplinary elements, and consequently such factors as the demeanor of witnesses are of little significance.

Rule-making is an agency action governing the future conduct either of groups of persons or of a single individual; it is essentially legislative in nature, not only because it operates in the future, but also because it is concerned largely with considerations of policy. In rule-making, disciplinary or accusatory elements are absent. Typically, the issues relate not to the evidentiary facts, as to which the demeanor of witnesses would often be important, but rather as to the inferences to be drawn from the facts or as to the predictions of future trends to be based upon them.

Adjudication, conversely, is concerned with the determination of past and present rights and liabilities. Typically, there is involved a determination as to whether past conduct was unlawful, so that the proceeding is characterized by an accusatory flavor and may result in disciplinary action. Inevitably, in such proceedings, issues of fact often are sharply controverted, with the consequence that the demeanor of witnesses becomes important and should be observed by an agency officer who will play a substantial role in the decision. ...

As we previously noted, agencies are allowed the broad discretion to choose whether to develop policy by rule-making or adjudication. ...

The public was fully apprised of the ... proceeding, and the PUC thoroughly accommodated public participation. Every person or entity seeking intervention was

allowed to become a party, even long after the filing deadline had passed. Every party, including Appellants, had numerous opportunities to marshal evidence in support of their positions. ...

The PUC has established procedures to obtain public comment and to allow public participation in contested cases pursuant to HRS § 269-27.5. HRS § 269-27.5 (1993) ... First, the PUC must hold, and did hold, a public hearing in the instant case, in accordance with HRS § 269-27.5. ... Second, the PUC's rules provide a mechanism for parties to participate in contested case proceedings. ... The PUC did not preclude anyone from becoming a party to the contested case proceeding. Appellants' participation demonstrates the PUC's willingness to allow individuals to participate and express their views fully, even though Appellants moved to intervene almost a full year after the proceeding commenced. Third, the public had extensive opportunities to provide input ... prior to the documenting this public input process were submitted to the PUC. For these reasons, we hold that the general public had substantial opportunity to provide input to the PUC, and, therefore, the PUC established necessary procedures by which the ratepayers could manifest their consent in order to persuade the PUC

Since the Commission was established in 1913, utility rates have been established along one fundamental approach. The Commission has opened this docket on decoupling to develop a total new way of regulating the electric industry. Policy will be established and rules developed. This approach requires "contested case" approaches with open participation. The Commission should rule against the HECO Motion with prejudice.

Dated: November 25, 2008.



HENRY CURTIS
LIFE OF THE LAND

CERTIFICATE OF SERVICE

I hereby certify that I have this date served a copy of the foregoing Motion for Leave to Reply and Reply upon the following entities, the original and 8 copies to the Public Utilities Commission, and two copies to the Consumer Advocate, and have mailed copies, postage prepaid, and properly addressed to the other parties listed below:

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Dated: November 25, 2008


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